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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/601,325 | 06/20/2003 | Matthias Muller | 608.0023USU | 6977 |

7590 11/30/2004

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EXAMINER

BRITTAINE, JAMES R

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------|---------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/601,325 | MULLER ET AL. |
| Examiner | Art Unit | My |
| James R. Brittain | 3677 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 September 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7,9-13 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) 9,10 and 17-19 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7,11-13 and 16 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) _____ | 4) <input type="checkbox"/> Interview Summary (PTO-413) _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) _____ | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11172003</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) _____ |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restriction

Applicant's election with traverse of Species II in the reply filed on September 13, 2004 is acknowledged. The traversal is on the ground(s) that claims to be restricted to different species must be mutually exclusive. This is not found persuasive because the species are patentably different and obviously there can be generic claims covering both species. Applicant also argues that the search is the same. That is not the basis and the search is not the same. Additionally, applicant has failed to indicate that the species are obvious variants over each other so as to state on the record that they are not patentably distinct.

The requirement is still deemed proper and is therefore made FINAL.

Claims 9, 10 and 17-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on September 13, 2004.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 11, 13 and 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Pohle (US 2575835) in view of Misono et al. (US 4374344).

Pohle (figures 1-3) teaches a holding clip for fixing the position of a getter 19 in an inner surface of a container comprising: a first section including connecting element 25 and finger 26 to which the getter may couple, and the portion of the legs 22 first bent up as shown in figure 3; and a second section for supporting the first section in the inner surface of the container comprising the portions of the legs 22 bent out and down wherein the first section portion comprising the portion of the legs 22 first bent up and the second section are elastically deformable to brace the getter within the container by providing a lateral force against the container. The getter is braced in the first section through its connection to the first section. The difference is that there is no crease in the legs 22 to define a flexurally rigid connection. However, Misono et al. (figure 3) teaches a plurality of creased legs 7 that inherently create a flexurally rigid connection at the crease. Applicant is reminded that “[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.” *In re Preda*, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). As it would be beneficial to better control the deformation of the holding clip of Pohle, it would have been obvious to modify the holding clip of Pohle so as to have a flexurally rigid connection as taught by Misono et al. so that the flexurally rigid connection and the first and second sections are elastically deformable to brace the getter in the first section and the second section in the inner surface. As to claim 2, the device of Pohle functions and therefore has its elastic force determined from its physical properties to perform its function of supporting a getter. In regard to claim 3, the flexurally rigid connection is defined as indicated above. As to claim 7, it would have been obvious to round off a leg of the device of Pohle in view of Misono et al. teaching that

it is desirable to do so.—As to claim 13, applicant is given Official Notice that spring steel is a well known material to form clips and its use for this purpose is within the ambit of one having ordinary skill in this art. As to claim 16, this claim is rejected for the reasons given above.

Claim 12 is rejected under 35 U.S.C. §103(a) as being unpatentable over Pohle (US 2575835) in view of Misono et al. (US 4374344) as applied to claim 1 above, and further in view of Shaffer (US 5717290).

Further modification of the holding clip of Pohle such that it is made of wire would have been obvious in view of Shaffer (figure 6) teaching that a wire is sufficiently strong to act as a getter supporting clip.

Conclusion

The patents of Arai (US 6392335; figures 1-5), Waymouth et al. (US 3737710; figure 1), Garenne-Colombes et al. (US 3634717; figures 2-8), Ricaud et al. (US 5712529; figure 3c), Utsumi et al. (US 5210460; figures 1, 2), Ficalora et al. (US 5386432; figures 1, 4) and Smith (US 2082851; figures 1-3) teach pertinent clip structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (703) 308-2222. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (703) 306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain
Primary Examiner
Art Unit 3677

JRB